

Introduced by Senator Wyland

February 22, 2013

An act to amend Section ~~52164.1~~ 313 of the Education Code, relating to pupil instruction.

LEGISLATIVE COUNSEL'S DIGEST

SB 542, as amended, Wyland. ~~Pupil instruction: census of pupils of limited English proficiency.~~ *English learners: reclassification.*

Existing law requires each school district that has one or more pupils who are English learners and, to the extent required by federal law, a county office of education and a charter school to assess the English language development of each of those pupils in order to determine their level of proficiency. Existing law requires annual assessments to continue until a pupil is redesignated as English proficient and requires the assessment to utilize primarily the English language development test identified or developed by the Superintendent of Public Instruction pursuant to specified provisions.

The Leroy Greene California Assessment of Academic Achievement Act requires school districts, charter schools, and county offices of education to administer to each of their pupils in grades 2 to 11, inclusive, certain achievement tests, including the standards-based achievement tests that are part of the Standardized Testing and Reporting (STAR) Program.

This bill would require that a pupil in any of grades 3 to 11, inclusive, be eligible to be reclassified as fluent English proficient if the pupil attains the proficient level of performance on the English language arts STAR test, a score of intermediate or above on all portions of the

California English Language Development Test, and a 3.0 grade point average at the end of the school year, and, upon attainment of these requirements, would require the pupil to be reclassified as fluent English proficient upon verified approval submitted by the pupil's parent or legal guardian. To the extent this bill would require local educational agencies to perform additional duties regarding the reclassification of English learners, the bill would impose a state-mandated local program.

The bill would authorize a school district to continue to receive state funding designated for its English learners for up to 2 years after the pupil has been reclassified as fluent English proficient, and would state the intent of the Legislature that the school district use the funding for the purpose of monitoring pupils who have been reclassified as fluent English proficient for up to 2 years. The bill also would correct some cross-references.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

~~Existing law requires each school district to ascertain the total number of pupils of limited English proficiency within the school district, and requires the Superintendent of Public Instruction, with the approval of the State Board of Education, to prescribe census-taking methods that include, among other things, an assessment of the language skills of each pupil enrolled in the school district.~~

~~This bill would make nonsubstantive changes to these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 313 of the Education Code is amended
2 to read:

3 313. (a) Each school district that has one or more pupils who
4 are English learners and, to the extent required by federal law,
5 each county office of education and each charter school shall assess

1 the English language development of each pupil in order to
2 determine the level of proficiency for purposes of this chapter.

3 (b) The department, with the approval of the state board, shall
4 establish procedures for conducting the assessment required
5 pursuant to subdivision (a) and for the reclassification of a pupil
6 from English learner to English proficient.

7 (c) Commencing with the 2000–01 school year until subdivision
8 (d) is implemented, the assessment shall be conducted upon initial
9 enrollment, and ~~annually~~, *annually* thereafter, during a period of
10 time determined by the Superintendent and the state board. The
11 annual assessments shall continue until the pupil is ~~re-designated~~
12 *reclassified* as English proficient. The assessment shall primarily
13 utilize the English language development test identified or
14 developed by the Superintendent pursuant to Chapter 7
15 (commencing with Section 60810) of Part 33 of Division 4 of Title
16 2.

17 (1) (A) *A pupil in any of grades 3 to 11, inclusive, shall be*
18 *eligible to be reclassified as fluent English proficient if the pupil*
19 *attains all of the following:*

20 (i) *The proficient level of performance on the English language*
21 *arts test administered pursuant to Article 4 (commencing with*
22 *Section 60640) of Chapter 5 of Part 33 of Division 4 of Title 2.*

23 (ii) *The score of intermediate or above on all portions of the*
24 *California English Language Development Test.*

25 (iii) *A 3.0 grade point average at the end of the school year.*

26 (B) *Upon attaining the requirements of subparagraph (A), a*
27 *pupil shall be reclassified as fluent English proficient upon verified*
28 *approval submitted by the pupil’s parent or legal guardian.*

29 (2) (A) *A school district may continue to receive state funding*
30 *designated for its English learners for up to two years after the*
31 *pupil has been reclassified as fluent English proficient.*

32 (B) *It is the intent of the Legislature that the school district use*
33 *the funding pursuant to this paragraph for the purpose of*
34 *monitoring pupils who have been reclassified as fluent English*
35 *proficient for up to two years.*

36 (d) (1) This subdivision shall not be implemented unless and
37 until the department receives written documentation from the
38 United States Department of Education that federal law permits
39 the implementation of the changes set forth in this subdivision or
40 until the 2013–14 school year, whichever occurs later.

1 (2) The assessment shall be conducted annually during a period
2 that commences on the day upon which 55 percent of the
3 instructional year is completed through July 1 of that calendar
4 year. Annual assessments shall continue until the pupil is
5 ~~redesignated~~ *reclassified* as English proficient. The annual
6 assessment shall primarily utilize the English language
7 development test identified or developed by the Superintendent
8 pursuant to Chapter 7 (commencing with Section 60810) of Part
9 33 of Division 4 of Title 2.

10 (3) The assessment shall be conducted upon the initial
11 enrollment of a pupil in order to provide information to be used
12 to determine if the pupil is an English learner.

13 (A) If the initial enrollment of a pupil occurs on a date outside
14 of the testing period identified pursuant to paragraph~~(1)~~; (2), the
15 prior year's annual assessment for the grade in which the pupil is
16 enrolling shall be used for this purpose.

17 (B) If the initial enrollment of a pupil occurs on a date within
18 the testing period identified pursuant to paragraph~~(1)~~; (2), the
19 initial assessment of the pupil shall be conducted as part of the
20 annual assessment conducted pursuant to paragraph~~(1)~~; (2).

21 (4) Notwithstanding paragraph~~(1)~~; (2), a school district shall
22 assess the English language development of a pupil pursuant to
23 this section no more than one time per school year.

24 (e) The assessments conducted pursuant to subdivision (d) shall
25 be conducted in a manner consistent with federal statutes and
26 regulations.

27 (f) The reclassification procedures developed by the department
28 shall utilize multiple criteria in determining whether to reclassify
29 a pupil as proficient in English, including, but not limited to, all
30 of the following:

31 (1) Assessment of language proficiency using an objective
32 assessment instrument, including, but not limited to, the English
33 language development test that is developed or acquired pursuant
34 to Section 60810.

35 (2) Teacher evaluation, including, but not limited to, a review
36 of the pupil's curriculum mastery.

37 (3) Parental opinion and consultation.

38 (4) Comparison of the performance of the pupil in basic skills
39 against an empirically established range of performance in basic
40 skills based upon the performance of English proficient pupils of

1 the same age, that demonstrates whether the pupil is sufficiently
2 proficient in English to participate effectively in a curriculum
3 designed for pupils of the same age whose native language is
4 English.

5 (g) This section does not preclude a school district or county
6 office of education from testing English learners more than once
7 in a school year if the school district or county office of education
8 chooses to do so.

9 *SEC. 2. If the Commission on State Mandates determines that*
10 *this act contains costs mandated by the state, reimbursement to*
11 *local agencies and school districts for those costs shall be made*
12 *pursuant to Part 7 (commencing with Section 17500) of Division*
13 *4 of Title 2 of the Government Code.*

14 ~~SECTION 1. Section 52164.1 of the Education Code is~~
15 ~~amended to read:~~

16 ~~52164.1. The Superintendent, with the approval of the state~~
17 ~~board, shall prescribe census-taking methods, applicable to all~~
18 ~~school districts in the state, which shall include, but need not be~~
19 ~~limited to, the following:~~

20 ~~(a) A determination of the primary language of each pupil~~
21 ~~enrolled in the school district. The primary language of a pupil~~
22 ~~shall be determined when the pupil enrolls. Once determined, the~~
23 ~~primary language need not be redetermined unless the pupil's~~
24 ~~parent or guardian claims there is an error. Home language~~
25 ~~determinations are required only once, unless the results are~~
26 ~~disputed by a parent or guardian.~~

27 ~~(b) An assessment of the language skills of all pupils whose~~
28 ~~primary language is other than English. All the skills listed in~~
29 ~~subdivision (m) of Section 52163 shall be assessed, except that~~
30 ~~reading and writing skills need not be assessed for pupils in~~
31 ~~kindergarten and grades 1 and 2. For those pupils who, on the basis~~
32 ~~of oral language proficiency alone, are clearly limited English~~
33 ~~proficient, assessment of reading and writing skills shall be~~
34 ~~necessary only to the extent required by subdivision (c). This~~
35 ~~assessment, which shall be made when a pupil enrolls in the school~~
36 ~~district, shall determine whether a pupil is fluent in English or is~~
37 ~~a pupil of limited English proficiency.~~

38 ~~(c) (1) For a pupil identified as being of limited English~~
39 ~~proficiency, a further assessment shall be made to determine the~~
40 ~~pupil's primary language proficiency, including speaking,~~

1 comprehension, reading, and writing, to the extent assessment
2 instruments are available. Parallel forms of the instruments used
3 to determine English proficiency shall be used, if available. The
4 results of the parallel assessment shall determine the extent and
5 sequence in which English and the primary language will be used
6 in the instruction of basic skills.

7 (2) A diagnostic assessment in the language designated for basic
8 skills instruction measuring speaking, comprehension, reading,
9 and writing, shall be administered for instructional use at the school
10 district level. The diagnostic assessment shall be updated as
11 necessary to provide a curriculum meeting the individual needs of
12 each pupil of limited English proficiency.

13 (3) If the assessment conducted pursuant to this subdivision
14 indicates that the pupil does not have proficiency in his or her
15 primary language, further assessment of the pupil's primary
16 language skills, including consultation with the pupil's parents or
17 guardians, the classroom teacher, the pupil, or others who are
18 familiar with the pupil's language ability in various environments,
19 shall be conducted. If this detailed assessment indicates that the
20 pupil does not have proficiency in his or her primary language,
21 then the pupil is not entitled to the protection of this article.

22 (4) The diagnostic assessment process shall be completed within
23 90 days after the date of the pupil's initial enrollment, and shall
24 be performed in accordance with rules and regulations adopted by
25 the state board.

26 (5) The parent or guardian of the pupil shall be notified of the
27 results of the assessment. The department shall conduct an
28 equivalency study of all language proficiency tests designated for
29 the identification of pupils of limited English proficiency to ensure
30 uniformity of language classifications and the reliability and
31 validity of the tests. Tests, materials, and procedures to determine
32 proficiency shall be selected to meet psychometric standards and
33 shall be administered so as not to be racially, culturally, or sexually
34 discriminatory.

35 (6) The department shall annually evaluate the adequacy of and
36 designate the instruments to be used by school districts, and the
37 instruments shall be available by March 15 of each year.

38 (7) The assessments shall be conducted by a person who speaks
39 and understands English and the primary language of the pupil
40 assessed, who is adequately trained and prepared to evaluate

1 cultural and ethnic factors, and who follows procedures formulated
2 by the Superintendent to determine which pupils are pupils of
3 limited English proficiency, as defined in subdivision (m) of
4 Section 52163. A school district may require the assessment to be
5 conducted by a person who holds a valid California teaching
6 credential and who meets the other qualifications specified in this
7 paragraph. The Superintendent may waive the requirement that
8 the assessment be conducted by a person who can speak and
9 understand the pupil's primary language where the primary
10 language is spoken by a small number of pupils, and the school
11 district certifies that it is unable to comply. This certification shall
12 be accompanied by a statement from the school district
13 superintendent that the chairperson of the school district advisory
14 committee on bilingual education has been consulted and was
15 unable to assist in the effort to locate an appropriate person to
16 administer the assessment.

17 (8) A school district may elect to follow federal census
18 requirements provided that the language skills described in
19 subdivision (m) of Section 52163 are assessed, and provided that
20 the procedures are consistent with Section 52164, the school district
21 shall be exempt from the state census procedures described in
22 subdivisions (a) and (b).